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TREATY WITH THAILAND ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, SIGNED AT BANGKOK ON MARCH 19, 1986

APRIL 25, 1988.—Treaty was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 22, 1988.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty between the Government of the United States of America and the Government of the Kingdom of Thailand on Mutual Assistance in Criminal Matters, signed at Bangkok on March 19, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty is one of a series of modern mutual legal assistance treaties being negotiated by the United States in order to counter more effectively criminal activities. The Treaty should be an effective tool to prosecute a wide variety of modern criminals including members of drug cartels, "white-collar criminals," and terrorists. The Treaty is self-executing and utilizes existing statutory authority.

The Treaty provides for a broad range of cooperation in criminal matters. Mutual assistance available under the Treaty includes: (1) taking testimony or statements of witnesses; (2) providing documents, records, and evidence; (3) serving documents; (4) executing requests for searches and seizures; (5) transferring persons in custody for testimonial purposes; (6) locating persons; (7) initiating proceedings upon request; and (8) assisting in forfeiture proceedings.

I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RONALD REAGAN.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 18, 1988.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Treaty between the Government of the United States of America and the Government of the Kingdom of Thailand on Mutual Assistance in Criminal Matters, signed at Bangkok on March 19, 1986. I recommend that the Treaty be transmitted to the Senate for its advice and consent to ratification.

The Treaty covers mutual legal assistance in criminal matters. In recent years, similar bilateral treaties have entered into force with Italy, the Netherlands, Switzerland and Turkey; others have been concluded (but not yet entered into force) with the Bahamas, Belgium, Canada, Colombia, Mexico, Morocco, and the United Kingdom on behalf of the Cayman Islands. The Treaty contains many provisions similar to those in the other treaties as well as some innovations.

The Treaty will not require further implementing legislation and will utilize the existing authority of the Federal courts, particularly 28 U.S.C. 1782.

Article 1 provides for assistance in "investigations, prosecutions and other proceedings relating to criminal matters." The Treaty thereby provides for assistance at the investigative stage (such as grand jury proceedings), as well as after formal charges have been filed. Assistance under the Treaty will include: taking testimony or statements of persons; provision of documents, records and evidence; serving documents; executing requests for searches and seizures; transferring persons in custody for testimonial purposes; locating witnesses; and other forms of assistance. The article states that it is not intended to create rights in private parties either to secure assistance or to suppress or exclude evidence obtained under the Treaty. The article also defines military offenses and provides that the Treaty does not apply to such offenses.

Article 2 specifies the limited bases under the Treaty in which assistance may be denied by the Requested State. These bases are when the request would prejudice the sovereignty, security, or other essential public interests of the Requested State, or when the request relates to a political offense. The Requested State may postpone execution of a request if its execution would interfere with an ongoing investigation or prosecution. This article also provides that, before the Central Authority of the Requested State refuses a request, it should try to determine whether there is a way to render the assistance, subject to specified terms and conditions. If

the Requesting State accepts the assistance subject to limitations, it must comply with those limitations.

Article 3 provides for the establishment of a Central Authority, which shall be the Attorney General or his designee for the United States and the Minister of Interior or his designee for Thailand. The article also provides that requests for assistance shall be made directly from one Central Authority to the other.

The first paragraph of Article 4 provides that requests shall be submitted in writing in the language of the Requested State. The second paragraph provides that requests shall contain the information required by the Requested State to execute the request, including but not limited to the subject matter and the nature of the investigation or proceeding to which the request relates, a description of the evidence, information or other assistance sought, and the purpose for which it is sought. The third paragraph outlines information that should be provided "when appropriate."

Article 5 obligates each party to execute requests promptly and, to the extent not prohibited by its law, in accordance with the directions of the Requesting State. It also provides that the courts of the Requested State shall have authority to issue all orders necessary to execute a request.

Article 6 provides that the Requested State shall pay all ordinary costs relating to the execution of the request, except for the lawful fees of expert witnesses and the travel and incidental expenses of witnesses travelling between the two States.

Article 7 prohibits the disclosure or use of any information or evidence obtained under the Treaty for purposes other than those stated in the request without the consent of the Requested State. Moreover, the article authorizes the Requested State to require that information or evidence furnished to the Requesting State be kept confidential in accordance with conditions which it may specify, provided that the conditions do not interfere with the use of the evidence in a public trial. In addition, the article permits the Requesting State to request that the application for assistance and the granting of assistance be kept confidential if possible.

Article 8 provides that if complusory process is necessary the Requested State may compet the taking of testimony or production of documents for the Requesting State by means available under the Requested State's laws.

Article 9 provides that the Requested State shall provide copies of its publicly available government records if such records are requested under the Treaty. In addition, the Requested State may, in its discretion, provide any record or information not publicly available to the same extent that such records or information would be made available to its own low enforcement and judicial authorities.

Article 10 obligates the Requested State to serve any legal documents transmitted by the Central Authority of the Requesting State. The Requesting State must transmit a document relating to a response or appearance in the Requesting State within a reasonable time before the scheduled response or appearance. No person other than a national of the Requesting State can be subjected to any legal sanction for failing to comply with a document that is served pursuant to this article and calls for his appearance in the Requesting State.

Article 11 provides that a request for the search, seizure and delivery of any article shall be carried out if the Requesting State provides sufficient evidence for such action under the laws of the Requested State. In the United States, a Thai request would have to be supported by a showing that probable cause for the search exists, and in Thailand a request by the United States would have to comply with the corresponding Thai evidentiary standard.

Article 12 authorizes the transfer of a person in custody in either State to the other for purposes of providing testimony, subject to the consent of the person and the relevant Party. Authority is also provided to keep such a person in custody unless release is authorized by the sending State. The receiving State is required to send the person back as soon as circumstances permit and is not permitted to condition the person's return on an extradition request by the sending State.

Article 13 requires the Requested State to take "all necessary measures" to locate or identify witnesses, potential defendants, experts, and other persons who are believed to be in its territory and are needed in connection with an investigation, prosecution or proceeding in the Requesting State.

Article 14 provides that one State may request the other to initiate criminal proceedings in certain circumstances.

Article 15 stipulates that a State may notify the other of fruits or instrumentalities of a criminal offense believed to be in the other State. The Parties may, to the extent permitted by their respective laws and this Treaty, assist one another in proceedings regarding forfeiture. "Fruits and instrumentalities" include money, vessels and other property used in perpetrating the crime or acquired as a result of the crime.

This provision expressly authorizes assistance in the execution of penal laws, an area in which countries do not necessarily otherwise assist each other. It is also consistent with a recently enacted U.S. statute, 18 U.S.C. 981(i), which permits equitable sharing of forfeited property with a foreign government pursuant to a treaty in order to reflect that government's contribution in narcotics investigations leading to seizure or forfeiture.

Article 16 provides that if a person in the Requested State is needed to appear in the Requesting State, the Requested State shall upon request invite the person to appear in the Requesting State. The Requesting State is required to pay the expenses of such voluntary appearance in accordance with Article 6.

Article 17 ensures a degree of "safe conduct" for a witness who voluntarily appears in the Requesting State pursuant to Article 16. "Safe conduct" encompasses limited immunity from prosecution, service of civil process, detention or any restriction of personal liberty with regard to acts or convictions that preceded the witness' departure from the Requested State while the witness is present in the Requesting State and for up to fifteen days after notification that his presence in the Requesting State is no longer required.

Article 18 provides that any documents, records or articles of evidence furnished under the Treaty must be returned to the Requested State as soon as possible unless that State waives their return.

Article 19 provides that the Treaty does not preclude either Party from utilizing other international agreements that may offer

means of securing assistance or cooperation, such as Interpol, or from using its own internal laws on legal assistance.

Article 20 sets forth standard procedures for ratification and entry into force of the Treaty.

Article 21 provides that either Party may terminate the Treaty by written notice. Termination takes effect six months after such notification.

The United States Delegation, consisting of representatives of the Departments of State and Justice, has also prepared a Technical Section-by-Section Analysis of the Treaty. That Analysis will be transmitted separately to the Senate Committee on Foreign Relations.

The Department of State joins the Department of Justice in favoring approval of this Treaty by the Senate at an early date.

Respectfully submitted,

GEORGE P. SHULTZ.

Treaty Between the Government of the Kingdom of Thailand and the Government of the United States of America on Mutual Assistance in Criminal Matters

The Government of the Kingdom of Thailand and the Government of the United States of America,

Desiring to maintain and to strengthen the longstanding bonds which unite the two countries, and to undertake effective mutual assistance in criminal matters,

Have agreed as follows:

Article 1

Obligation to Assist

1. The Contracting States agree, in accordance with the provisions of this Treaty, to provide mutual assistance in connection with investigations, prosecutions, and other proceedings relating to criminal matters.

2. Assistance shall include but not be limited to:

(a) taking the testimony and statement of persons;
(b) providing documents, records, and evidence;
(c) serving documents;
(d) executing requests for searches and seizures;
(e) transferring persons in custody for testimonial purposes;
(f) locating persons;
(g) initiating proceedings upon request; and
(h) assisting in forfeiture proceedings.

3. Assistance shall be provided without regard to whether the acts which are the subject of the investigation, prosecution, or proceeding in the Requesting State are prohibited under the law in the Requested State, or whether the Requested State would have jurisdiction with respect to such acts in corresponding circumstances.

4. This Treaty is intended solely for mutual assistance between the criminal law enforcement authorities of the Contracting States and is not intended or designed to provide such assistance to private parties.

5. A private party may not rely upon any provision of this Treaty to impede the execution of a request, or to exclude or suppress evidence obtained under the Treaty.

6. This Treaty shall not apply to the execution of arrest warrants or to military offenses. For the purposes of this Treaty, military offenses are violations of military laws and regulations which do not constitute offenses under ordinary criminal law.

ARTICLE 2

Limitations on Compliance

1. The Requested State may refuse to execute a request to the extent that:

(a) the request would prejudice the sovereignty, security, or other essential public interests of the Requested State; or

(b) the request relates to a political offense.

2. Before refusing the execution of any request pursuant to this Aticle, the Requested State shall determine whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts the assistance subject to these conditions, it shall comply with the conditions.

3. If the execution of a request would interfere with an ongoing criminal investigation, prosecution or proceeding in the Requested State, execution may be postponed by that State, or made subject to conditions determined to be necessary by the State after consultations with the Requesting State.

4. The Requested State shall promptly inform the Requesting State of the reason for refusing or postponing the execution of a request.

ARTICLE 3

Central Authorities

1. A Central Authority shall be established by each Contracting State.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by him.

3. For the Kingdom of Thailand, the Central Authority shall be the Minister of Interior or a person designated by him.

4. Requests under this Treaty shall be made by the Central Authority of the Requesting State to the Central Authority of the Requested State.

ARTICLE 4

Contents of Requests for Mutual Assistance

1. A request for assistance shall be submitted in writing in the language of the requested State. All accompanying documents shall be translated into the language of the Requested State. Such translations shall be certified by a sworn or approved translator in accordance with the laws or practices of the Requesting State.

2. The request shall include the following:

(a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

(b) the subject matter and nature of the investigation, prosecution, or proceeding;

(c) a description of the evidence or information sought or the acts of assistance to be performed; and

(d) the purpose for which the evidence, information, or other assistance is sought.

3. When appropriate, a request shall also include:

(a) available information on the identity and whereabouts of a person to be located;

(b) the identity and location of a person to be served, that person's relationship to the investigation, prosecution, or proceeding, and the manner in which service is to be effected;

(c) the identity and location of persons from whom evidence is sought;

(d) a precise description of the place or person to be searched and of the articles to be seized;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be answered;

(g) a description of any particular procedure to be followed in executing the request;

(h) information as to the allowances and expenses to which a person appearing in the Requesting State will be entitled; and

(i) any other information which may be brought to the attention of the requested State to facilitate its execution of the request.

ARTICLE 5

Execution of the Request

1. The Central Authority of the Requested State shall promptly comply with the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request, and shall issue subpoenas, search warrants, or other process necessary in the execution of the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by officials of the Requested State at no cost to the Requesting State.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. However, the method of execution specified in the request shall be followed except insofar as it would be incompatible with the laws of the Requested State.

ARTICLE 6

Costs

The Requested State shall pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to travel of persons pursuant to Articles 12 and 16, which fees, allowances, and expenses shall be borne by the Requesting State.

ARTICLE 7

Limitations on Use

1. Information and evidence obtained under this Treaty, as well as information derived thereform, shall not be used for purposes

other than those stated in the request without the prior consent of the Requested State.

2. The Requesting State may require that the application for assistance, its contents and related documents, and the granting of assistance be kept confidential. If the request cannot be executed without breaching the required confidentiality, the Requested State shall so inform the Requesting State which shall then determine whether the request should nevertheless be executed.

3. The Requested State may require that information or evidence furnished, and information derived therefrom, be kept confidential in accordance with conditions which it shall specify. In that case, the Requesting State shall comply with the conditions, except to the extent that the information or evidence is needed in a public trial resulting from the investigation, prosecution, or proceeding described in the request.

ARTICLE 8

Taking Testimony and Statements and Producing Evidence in the Requested State

1. Upon a request that a person be summoned to give testimony, make a statement, or produce documents, records, or articles in the Requested State, that person shall be compelled to do so in the same manner and to the same extent as in criminal investigations, prosecutions, or proceedings in the Requested State.

2. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim made known to the Requesting State for resolution by the authorities of the Requesting State.

3. The Requested State shall furnish information in advance as to the date and place of the taking of the evidence.

4. The Requested State shall authorize the presence of such persons as specified in the request for the taking of testimony or a statement during the execution of the request and allow such persons to question the person whose testimony or statement is sought, insofar as it would not be prohibited by the laws of the Requested State.

5. Business records produced under this Article shall be authenticated by the person in charge of maintaining them through the use of Form A appended to this Treaty. No further certification shall be required. Documents authenticated under this paragraph shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 9

Providing Records of Government Offices or Agencies

1. The Requested State shall provide copies of publicly available records of a government office or agency.

2. The Requested State may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it

would be available to its own law enforcement or judicial authorities. The Requested State in its discretion may deny the request entirely or in part.

3. Documents provided under this Article shall be attested by the official in charge of maintaining them through the use of Form B appended to this Treaty. No further certification shall be required. Documents attested under this paragraph shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 10

Serving Documents

1. The Requested State shall effect service of any legal document transmitted for this purpose by the Requesting State.

2. Any request for the service of a document requiring the appearance of a person before an authority in the Requesting State shall be transmitted a reasonable time before the scheduled appearance.

3. The Requested State shall return as proof of service a dated receipt signed by the person served or a declaration signed by the officer effecting service, specifying the form and date of service.

4. A person, other than a national of the Requesting State, who has been served pursuant to this Article with a legal document calling for his appearance in the Requesting State, shall not be subjected to any civil or criminal forfeiture, or other legal sanction or measure of restraint, because of his failure to comply therewith, even if the document contains a notice of penalty.

ARTICLE 11

Search and Seizure

1. A request for search, seizure, and delivery of any article to the Requesting State shall be executed if it includes the information justifying that action under the laws of the Requested States.

2. Every official of the Requested State who has custody of a seized article shall certify, through the use of Form C appended to this Treaty, the continuity of custody, the identity of the article, and the integrity of its condition. No further certification shall be required. Such certificate shall be admitted in evidence as proof of the truth of the matters set forth therein.

ARTICLE 12

Transferring Persons in Custody for Testimonial Purposes

1. A person in custody in the Requested State who is needed as a witness in the Requesting State shall be transported to that State if the person and the Requested State consent.

2. A person in custody in the Requesting State whose presence in the Requested State is required for the purpose of confrontation may be transported to the Requested State if the person and the Requested State consent.

3. For the purposes of this Article:

(a) the receiving State shall have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the sending State;

(b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed;

(c) the receiving State shall not require the sending State to initiate extradition proceedings in order to obtain the return of the person transferred; and

(d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

ARTICLE 13

Locating Persons

1. The Requested State shall take all necessary measures to locate persons who are believed to be in that State and who are needed in connection with a criminal investigation, prosecution, or proceeding in the Requesting State.

2. The requested State shall communicate as soon as possible the results of its inquiries to the Requesting State.

ARTICLE 14

Initiating Proceedings Upon Request

1. When one State is competent to initiate proceedings but wishes the proceedings to be carried out by the other State, the Central Authority of the former shall officially notify the Central Authority of the latter of the facts of the case. If the Requested State has jurisdiction in this regard, it shall submit the case to its competent authorities with a view to initating criminal proceedings. Those authorities shall issue their decision in accordance with the laws of their country.

2. The Requested State shall report on the action taken regarding the notification and transmit, as appropriate, a copy of the decision issued.

ARTICLE 15

Assisting in Forfeiture Proceedings

1. If the Central Authority of one State becomes aware of fruits or instrumentalities of crime located in the other State which may be forefeitable or otherwise subject to seizure under the laws of the other State, it may so inform the Central Authority of that other State. If that other State has jurisdiction in this regard it shall present this information to its competent authorities for a determination whether any action is appropriate. Those authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other State on the action taken.

2. The Contracting States may assist each other to the extent permitted by their respective laws and this Treaty, in proceedings relating to the forfeiture of the fruits or instrumentalities of crime.

ARTICLE 16

Appearance in the Requesting State

When the appearance of a person who is in the Requested State is needed in the Requesting State, the Central Authority of the Requested State shall invite the person to appear before the appropriate authority in the Requesting State, and shall indicate the extent to which the expenses will be paid. The response of the person shall be communicated promptly to the Requesting State.

ARTICLE 17

Safe Conduct

1. No person in the territory of the Requesting State to testify or provide a statement in accordance with the provisions of this Treaty shall be subject to service of process or be detained or subject to any other restriction of personal liberty by reason of any acts which proceded his departure from the Requested State.

2. The safe conduct provided for by this Article shall cease when the person, having had the opportunity to leave the Requesting State within 15 consecutive days after notification that his presence was no longer required by the appropriate authorities, shall have nonetheless stayed in that State or shall have voluntarily returned after having left it.

ARTICLE 18

Returning Documents, Records for Articles

The Requesting State shall return any documents, records, or articles furnished in execution of requests as soon as possible unless the Requested State waives their return.

ARTICLE 19

Compatibility With Other Treaties and National Laws

Assistance and procedures provided for by this Treaty shall not prevent either of the Contracting States from granting assistance through the provisions of other international agreements to which it may be a party or through the provisions of its national laws.

ARTICLE 20

Ratification and Entry Into Force

1. This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Treaty shall enter into force upon the exchange of the instruments of ratification.

ARTICLE 21

Termination

Either Contracting State may terminate this Treaty by means of written notice to the other Contracting State at any time. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Treaty.

Done at Bangkok, in duplicate, in the Thai and English languages, each text being equally authentic, this nineteenth day of March in the two thousand five hundred and twenty-ninth year of the Buddhist Era, corresponding to the one thousand nine hundred and eighty-sixth year of the Christian Era.

For the Government of the United States of America:

EDWIN MEESE III,
Attorney General of the
United States of America.

For the Government of the Kingdom of Thailand:

SIDDHI SAVETSILA,
Air Chief Marshal,
Deputy Prime Minister, and
Minister of Foreign Affairs of Thailand.

FORM A

CERTIFICATE OF AUTHENTICITY
OF BUSINESS RECORDS

I, ..., attest on penalty of
(Name)

criminal punishment for false statement or attestation

that I am employed by .....
(Name of Business from

.....and that my official title
which documents are sought)

is ....., I further state that each
(Official Title)

of the records attached hereto is the original or a

duplicate of the original of records in the custody

of .....
(Name of Business from which Documents are sought)

(A) such records were made at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such records were kept in the course of a regularly conducted business activity;

(C) the business activity made such records as a regular practice; and

(D) if such record is not the original, such record is a duplicate of the original.

.....
(Signature)

.....
(Date)

FORM B

ATTESTATION OF AUTHENTICITY OF DOCUMENTS

I, ..., attest on penalty of
(Name)

criminal punishment for false statement or attestation

that my position with the Government of.....
(Country)

is.....and that in that position I am
(Official Title)

authorized by the law of.....to attest
(Country)

that the documents attached and described below are true

copies of original official records which are recorded or

filed in.....
(Name of Government Office or Agency)

which is an office or agency of the Government of.....
(Country)

.....

Description of documents:

.....
Signature

.....
Title

.....
Date

FORM C

I, ... certify that I am
(Name)

..... employed in the .....
(Title) (Name of

..... . I received custody of the
Government Office or Agency)

articles listed below from .....
(Name of Person)

on ....., at ..... .
(Date) (Place)

I relinquished custody of those articles to .....
(Name)

on ....., at .....in the same condition
(Date) (Place)

as when I received them (or if different as noted below).

Description of articles:

Changes in condition while in my custody:

.....
Signature

.....
Title

OFFICIAL SEAL .....
Place

.....
Date

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